comprising high affinity oligonucleotides, assays for selecting test compounds, and related kits.

Inventors: Alan R. Rein *et al.* (NCI).

Patent Status: U.S. Patent No. 6,316,190 issued 13 Nov 2001 (HHS Reference No. E–107–1996/0–US–06).

Licensing Status: Available for licensing.

Licensing Contact: Sally Hu, PhD; 301–435–5606; *hus@mail.nih.gov.*

Dated: March 1, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–4757 Filed 3–4–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Opportunity for a Hearing on Compliance of Missouri State Plan Provisions Concerning Payments for Home Health Services With Title XIX (Medicaid) of the Social Security Act

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of Opportunity for a Hearing; Compliance of Missouri Medicaid State Plan Home Health Benefit.

SUMMARY: This notice announces the opportunity for an administrative hearing to be held no later than 60 days following publication in the **Federal Register** at the CMS Kansas City Regional Office, 601 E. 12th Street, Kansas City, Missouri 64106, to consider whether Missouri State plan provisions concerning payments for home health services comply with the requirements of the Social Security Act as discussed in the February 26, 2010 letter sent to the State and published herein.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by April 5, 2010.

FOR FURTHER INFORMATION CONTACT: Benjamin R. Cohen, Presiding Officer, CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244, Telephone: (410) 786–3169.

SUPPLEMENTARY INFORMATION: This notice announces the opportunity for an administrative hearing concerning the finding of the Administrator of the Centers for Medicare & Medicaid Services (CMS) that the approved State plan under title XIX (Medicaid) of the Social Security Act (the Act) for the State of Missouri is not in compliance with the provisions of sections 1902(a) of the Act and the proposed withholding of Federal financial participation for a portion of Missouri's expenditures for home health services. In particular, CMS has found that the State plan does not provide for home health services for Medicaid beneficiaries who are not "confined to the home." As a result of this "homebound" requirement, certain Medicaid beneficiaries are not receiving the full benefit package required under the Act and applicable regulations. Consequently, Federal payments for a portion of the Federal funding for home health services will be withheld, subject to the opportunity for a hearing described below. This notice is being provided pursuant to the requirements of section 1904 of the Act, as implemented at 42 CFR 430.35 and 42 CFR part 430, subpart D.

Section 1902(a)(10)(D) requires that State plans provide for the coverage of home health services for any individual who, under the State plan, is entitled to nursing facility services. Nursing facility services are a required service for categorically needy populations under section 1902(a)(10)(A), as defined in section 1905(a)(4)(A). Under CMS regulations, a service included as a covered benefit under a State plan must be "sufficient in amount, duration and scope to reasonably achieve its purpose" (42 CFR 440.230(b)) and, for required services, cannot be denied or reduced to an eligible beneficiary "solely because of the diagnosis, type of illness, or condition" (42 CFR 440.230(c)). It is not consistent with these requirements to deny home health services to eligible individuals who need such services on the basis that they are not "homebound."

The CMS provided interpretive guidance indicating that these statutory requirements preclude denial of home health services to eligible individuals because they are not "homebound." On July 25, 2000, CMS, then the Health Care Financing Administration, issued Olmstead Update #3 which clarified that the Medicare rule for home health services requiring an individual to be "homebound" did not apply to the receipt of Medicaid home health services. Specifically, Olmstead Update #3 states that the "homebound" requirement violates Federal regulatory requirements at 42 CFR section 440.230(c) and section 440.240(b).

The "homebound" requirement in Missouri was raised during the review of Missouri State plan amendment (SPA) 05–09. At that time, Missouri chose to withdraw the page containing the "homebound" language but did not reverse the policy. Since that time, there have been numerous discussions between CMS and Missouri regarding this issue. On October 30, 2009, CMS provided Missouri with notice of the preliminary determination that it appeared to be out of compliance with Federal Medicaid requirements. In addition, CMS requested that Missouri submit a SPA to remove the "homebound" requirement.

In its response dated December 31, 2009, Missouri indicated that it was operating under its approved State plan and that the requirements of Missouri's home health program are the same as those of the Federal Medicare program. The State did not submit a SPA. CMS believes that Missouri has had numerous opportunities to come into compliance with Federal requirements.

The notice to Missouri, dated February 26, 2010, containing the details concerning the compliance issue, the proposed withhold, and the opportunity for an administrative hearing reads as follows:

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

Mr. Ronald J. Levy, Director,
Department of Social Services,
Broadway State Office Building,
Jefferson City, MO 65102.

Dear Mr. Levy: This letter provides notice that the Centers for Medicare & Medicaid Services (CMS) has found that Missouri is not providing all Medicaid beneficiaries with home health benefits that are required under title XIX of the Social Security Act (the Act) and that until this deficiency is corrected (by making home health services available to all beneficiaries entitled to such services), a portion of the Federal funding for home health services will be withheld, subject to the opportunity for a hearing. The details of the finding, proposed withholding, and opportunity for a hearing are described in detail below.

Specifically, CMS has found that the approved Missouri State plan under title XIX (Medicaid) of the Act is not in compliance with the provisions of section 1902(a) of the Act with respect to the home health benefit. In particular, CMS has found that the State plan does not provide for home health services for Medicaid beneficiaries who are not "confined to the home." As a result of this "homebound" requirement, certain Medicaid beneficiaries are not receiving the full benefit package required under section 1902(a)(10) of the Act, which in subparagraph (D) provides for the inclusion of home health services in the standard Medicaid benefit package.

Moreover, the "homebound" requirement does not comply with section 1902(a)(10)(B) of the Act, which requires that State plans provide a comparable amount, duration, and scope of benefits to all individuals eligible for the standard Medicaid benefit package, and within each optional group of individuals eligible for benefits based on medical need.

The basic framework of Medicaid coverage of home health services is set forth in the Federal statute and regulations. Section 1902(a)(10)(D) of the Act requires that State plans provide for the coverage of the home health services benefit, set forth in section 1905(a)(7) of the Act, for any individual who, under the State plan, is entitled to nursing facility services. Pursuant to section 1902(a)(10) of the Act, the nursing facility service benefit described at section 1905(a)(4)(A) of the Act is a required benefit that must be included in the standard Medicaid benefit package for categorically needy populations described in section 1902(a)(10)(A) of the Act. Section 1902(a)(10)(B) of the Act sets forth the benefit comparability principle, that the amount, duration, and scope of medical assistance benefits for all categorically needy individuals described in section 1902(a)(10)(A) of the Act must be equal.

Under CMS regulations implementing the benefit package requirements at sections 1902(a)(10) and 1905(a) of the Act that are described above, home health services are included as a mandatory benefit for the categorically needy under 42 CFR 440.210(a)(1). Moreover, a service included as a covered benefit under a State plan must be "sufficient in amount, duration, and scope to reasonably achieve its purpose" (42 CFR 440.230(b)) and, for required services, cannot be denied or reduced to an eligible beneficiary "solely because of the diagnosis, type of illness, or condition" (42 CFR 440.230(c)). It is not consistent with these requirements to deny home health services to eligible individuals who need such services based on a "homebound" requirement.

The State has had clear notice that a "homebound" requirement is inconsistent with the Medicaid statute. In response to the June 22, 1999, Supreme Court decision in the case of *Olmstead* v. *L.C. & E.W.*, which reinforced the Americans with Disabilities Act by affirming the right of individuals with disabilities to live in their communities, CMS, then the Health Care Financing Administration (HCFA), issued a series of State Medicaid Director letters to clarify Medicaid policy on issues impacted by the Olmstead decision. On July 25, 2000, HCFA issued Olmstead Update #3 which clarified that the Medicare rule for home health services requiring an individual to be "homebound" did not apply to the receipt of Medicaid home health services. Olmstead Update #3 specifically stated that the "homebound" requirement violates Federal regulatory requirements at 42 CFR section 440.230(c) and section 440.240(b).

The CMS notified the State in a request for additional information on proposed State plan amendment (SPA) 05–09 that the State needed to change its "homebound" requirement to comply with Federal requirements. At that time, Missouri withdrew the SPA page that raised this issue but did not reverse its policy in order to comply with Federal requirements. Subsequently, CMS has raised the issue with the State in numerous conversations and again in a letter dated October 30, 2009. Your letter of December 31, 2009, indicated that the State did not intend to make the required changes.

For all of these reasons, and in light of the need to protect beneficiaries by ensuring that they receive all the services to which they are required, I am taking this compliance action to withhold a portion of the Federal financial participation in State expenditures for home health services, subject to the opportunity for a hearing described below, until such time as I am satisfied that the State is complying with the Federal requirements discussed above. The withholding will initially be 10 percent of the Federal share of the State's quarterly claim for home health services as reported on Line 12 of your Form CMS–64. The withholding percentage will then increase 5 percentage points each quarter (*i.e.*, 15%, 20%, *etc.*) that the State remains out of compliance, up to a maximum withholding percentage of 100 percent. The withholding will end when a SPA bringing the State into compliance is approved by CMS.

The State has 30 days from the date of this letter either to submit a plan for how the State will come into compliance or to request a hearing. As specified in the accompanying **Federal Register** notice we are providing an opportunity for an administrative hearing to ensure that you have an opportunity for a hearing prior to this determination becoming final. However, it is up to the State as to whether you choose to go forward with this hearing. If you choose to proceed with a hearing, you must submit a request within 30 days of the date of this letter. If a request for a hearing is timely submitted, the hearing will be convened by the Hearing Officer designated below on [no later than 60 days after the date of the **Federal Register** notice], or a later date by agreement of the parties and the Hearing Officer, at the CMS Regional Office in Kansas City, Missouri in accordance with the procedures set forth in Federal regulations at 42 CFR Part 430, Subpart D. The overall issue in any such appeal will be whether the Missouri homebound requirement is consistent with Federal requirements. Any request for such a hearing should be sent to the designated hearing officer. The Hearing Officer also should be notified if you request a hearing but cannot meet the timeframe expressed in this notice. Your Hearing Officer is: Benjamin R. Cohen, Hearing Officer, Centers for Medicare & Medicaid Services, 2520 Lord Baltimore Drive, Suite L, Baltimore, MD 21244.

If you choose not to request a hearing, and plan to come into compliance, please submit within 30 days of the date of this letter an explanation of how you plan to come into compliance with Federal requirements and the timeframe for doing so. We are available to provide further information or assistance on the steps necessary to bring the State into compliance.

Should you not come into compliance and not request a hearing within 30 days, a notice of withholding will be sent to you and the withholding of Federal funds will begin as described above.

If you have any questions or wish to discuss this determination further, please contact: Mr. James G. Scott, Associate Regional Administrator, Division of Medicaid and Children's Health Operations, CMS Kansas City Regional Office, 601 E. 12th Street, Kansas City, MO 64106.

Sincerely,

Charlene Frizzera,

Acting Administrator.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program.)

Dated: February 26, 2010.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–4671 Filed 3–4–10; 8:45 am]

BILLING CODE 4120–01–P